

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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RODERICK L. HYMON,

Plaintiff,

v.

MARY K. HOLTHUS, *et al.*,

Defendants.

Case No. 2:23-cv-01764-MMD-BNW

ORDER

Plaintiff Roderick L. Hymon brings this civil rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at Clark County Detention Center. (ECF No. 3.) On August 21, 2024, the Court ordered Hymon to update his address by September 20, 2024. (ECF No. 6.) That deadline expired without an updated address from Hymon, and his mail from the Court is being returned as undeliverable. (ECF No. 7.)

I. DISCUSSION

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. See *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In determining whether to dismiss an action on one of these grounds, the Court must consider (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its docket;

1 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
2 cases on their merits; and (5) the availability of less drastic alternatives. *See In re*
3 *Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting
4 *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

5 The first two factors, the public's interest in expeditiously resolving this litigation
6 and the Court's interest in managing its docket, weigh in favor of dismissal of Hymon's
7 claims. The third factor, risk of prejudice to defendants, also weighs in favor of dismissal
8 because a presumption of injury arises from the occurrence of unreasonable delay in filing
9 a pleading ordered by the court or prosecuting an action. *See Anderson v. Air West*, 542
10 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of
11 cases on their merits—is greatly outweighed by the factors favoring dismissal.

12 The fifth factor requires the Court to consider whether less drastic alternatives can
13 be used to correct the party's failure that brought about the Court's need to consider
14 dismissal. *See Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining
15 that considering less drastic alternatives before the party has disobeyed a court order
16 does not satisfy this factor); *accord Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th
17 Cir. 2002) (explaining that *Yourish* “eroded” “the persuasive force of” earlier Ninth Circuit
18 cases that “implicitly accepted pursuit of less drastic alternatives prior to disobedience of
19 the court's order as satisfying this element[,]” like the “initial granting of leave to amend
20 coupled with the warning of dismissal for failure to comply”). Courts “need not exhaust
21 every sanction short of dismissal before finally dismissing a case, but must explore
22 possible and meaningful alternatives.” *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th
23 Cir. 1986).

24 Because this action cannot realistically proceed without the ability for the Court
25 and the defendants to send Hymon case-related documents, filings, and orders, the only
26 alternative is to enter a second order setting another deadline. But without an updated
27 address, the likelihood that the second order would reach Hymon is low, so issuing a
28 second order will delay the inevitable and further squander the Court's finite resources.

1 Setting another deadline is not a meaningful alternative given these circumstances, so
2 the fifth factor favors dismissal.

3 **II. CONCLUSION**

4 Having thoroughly considered these dismissal factors, the Court finds that they
5 weigh in favor of dismissal. It is therefore ordered that this action is dismissed without
6 prejudice based on Hymon's failure to file an updated address in compliance with the
7 Court's August 21, 2024, order. The Clerk of Court is directed to enter judgment
8 accordingly and close this case. No other documents may be filed in this now-closed
9 case. If Hymon wishes to pursue his claims, he must file a complaint in a new case and
10 provide the Court with his current address.

11 It is further ordered that Hymon's application to proceed *in forma pauperis* (ECF
12 No. 3) is denied as moot.

13 DATED THIS 4th Day of October 2024.

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17 MIRANDA M. DU
18 UNITED STATES DISTRICT JUDGE
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